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SECRETARY



Handwritten signature of Paul E. Patton

PAUL E. PATTON
GOVERNOR

COMMONWEALTH OF KENTUCKY
NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
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January 28, 1997

Mr. Robert F. McGhee, Director
Water Management Division
USEPA Region 4
100 Alabama Street
Atlanta, Georgia 30303

Dear Mr. McGhee,

As Region 4 continues to deliberate on whether or not to approve Kentucky's antidegradation regulation 401 KAR 5:030, the Division of Water would like to reinforce arguments made previously in favor of this regulation. In particular, we will emphasize the positive way in which the designational approach is being implemented that results in protection of identified and potential high quality waters, yet is realistic for the Division to implement.

The designational approach has been approved by EPA in several states throughout the country. Recently, EPA published in the Federal Register an antidegradation approach in Pennsylvania that incorporated most of that state's disapproved regulation, including the designational approach of identifying and listing high quality waters. At the water quality standards meeting in Denver last summer, Colorado outlined their EPA-approved antidegradation program, which also included the designational approach. Clearly, the designational approach has met with EPA approval in other states, and it can be made workable by proper implementation. When combined with a water quality-based approach to permitting using 7Q10 critical flows for use protected streams, the overall result is a very protective program for all the state's streams.

The key to implementing the antidegradation regulation is to ensure the identification of high quality waters on streams with new and expanded discharges. In some cases, the stream has already been designated as high quality or use protected, i.e the designational approach. Potential dischargers to designated high quality waters are presented with the strict requirements that would be required and urged to locate elsewhere. This occurred recently with the City of Somerset's preliminary inquiry into the feasibility of a new treatment plant on Buck Creek. Once a facility realizes the situation, they usually choose to locate elsewhere. However, for streams that have not been designated for antidegradation purposes, a permit request for a new or expanded discharge triggers a review of any instream and land use data to screen the site for potential high quality status. Undesignated streams will never be assumed to be use protected. If there is a reasonable possibility



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that the stream could be considered high quality, the Division conducts a biological survey. We recently conducted reconnaissances of Long Lick Creek in Bullitt County and Flagg Spring Creek in Campbell County, where it was quickly obvious from habitat degradation and land use activities adjacent to the streams that neither could possibly be high quality. We have also had two instances where available information indicated that streams are potentially high quality. As we discussed with you in December, we were prepared to do a full biological survey on West Bays Fork in Allen County for the expanded Scottsville wastewater treatment plant in Allen County until we realized that the WLA limits had been issued two years ago and the contract had been let for construction. As soon as weather permits, a biological survey will be carried out on Cabin Creek in Lewis County following a recent request from the City of Tollesboro for a new wastewater treatment facility.

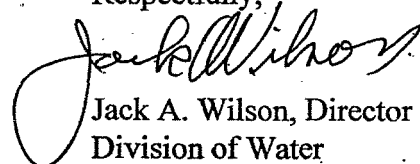
If a facility decides to locate on a high quality stream, the Division can still deny the discharge, apply very stringent limits, or require an alternatives analysis. It is worth stressing again that the "twice as stringent" and numerical limits in the regulation are only a starting point. It may be determined that more stringent limits (or prohibition of the discharge altogether) is necessary to adequately protect the high quality water.

Because the antidegradation regulation applies only to situations with new or expanded discharge applications (in other words, existing discharges are "grandfathered in", an approach that is part of several states' approved antidegradation programs), resources can be focused on those potential high quality streams that are vulnerable to degradation instead of considering all of the state's undesignated waters. Presently, this is the only practical way in which the Division can carry out the program, and it also is protective of the designated and potential high quality waters in the state.

However, there are other means by which high quality waters will be identified. The regulation specifies steps that anyone, including the Division, can take to have a water considered as high quality. Also, as Kentucky moves to the watershed approach, we expect that many more potential high quality streams will be evaluated as compared to previous statewide monitoring efforts.

The Division hopes that this letter has helped to clarify Kentucky's position on implementation of the antidegradation program and demonstrates that the program is protective of identified and potential high quality waters. We think our program is effective, realistic, and satisfies federal antidegradation requirements.

Respectfully,



Jack A. Wilson, Director
Division of Water